

FRANCHISING SOLUTIONS



21st January 2011

Mr Timothy Hughes (Principal Research Officer)
Economics and Industry Standing Committee
Level 1
11 Harvest Terrace
West Perth WA 6005

Submission to the Economics and Industry Committee in relation to the Inquiry into the Franchising Bill 2010

Dear Timothy,

Background

I respectfully make this submission having been actively involved over the past 24 years in the sector - as the CEO of a leading franchise group (Snap Printing) for nearly 14 years; a consultant to the sector (both franchisees and franchisors) for 10 years (currently operate my own business as Franchising Solutions); a mediator for the Office of Franchise mediation Advisor (current WA Panel member); a Member of the Franchise Policy Council (the Federal body appointed to advise the Government on the Franchising Code of Conduct) for the whole of its existence and am currently a panel Member of the ACCC's Franchise Consultative Panel. I have attached my Profile document should more detail be required.

I would point out that I am a member of the Franchise Council of Australia and support their submission on this matter.

Submission

The Submission Guidelines have specifically asked me to respond to four points –

1. *Indicate if for or against the main thrust of the Bill – I am totally opposed to this Bill, in its entirety.*
2. *Indicate whether you are for or against specific measures in the Bill – I am against all the measures in this Bill.*
3. *Summarise changes I want and indicate why – I want this Bill withdrawn entirely (see submission comment below).*

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4. Indicate the clause number when commenting on specific clauses, noting sub clause numbers where relevant – **Noted in submission detail below.**

Submission detail – key points

I consider that the flaws in the Bill are so fundamental, and the implications for the WA franchise sector so significant, that the Bill should not be supported in any form. Foremost amongst the flaws is the fact that the legislation is State based, and applies to an area already comprehensively regulated by Federal law. If enacted, I consider that the Bill is likely to have a negative impact on franchising in Western Australia, and potentially throughout the country.

Australia has worked very hard over nearly 2 decades to develop a national framework for this sector and it is clear that the legislation and Franchising Code of Conduct are internationally recognized as first class processes for regulating this sector. Whilst no legislation can hope to be perfect, the current arrangements provide a clear and stable basis to optimize activity in this vibrant sector. Various formal Government reviews have reconfirmed that the fundamentals inherent in present legislation are sound.

Specifically -

- **Extra-territorial application** - The application of the Bill is extremely broad, with no attempt being made to constrain the Bill even to franchise agreements for businesses located in WA. Indeed the Bill is expressed to include “acts, transactions and matters done or entered into outside WA” (clause 6 (a)) including things “subject to the law of the Commonwealth, another State, a Territory or a place outside the Commonwealth” (Clause 6 (b)). This means that Bill
- applies to all franchise agreements of those franchisors based in WA including those located outside of WA. This puts WA franchisors at a competitive disadvantage when compared to their eastern states counterparts.
- **Good faith** - A new definition of statutory good faith is introduced, requiring parties “to act fairly, honestly, reasonably and in a cooperative manner” (clause 11 (1)). This definition goes far beyond the accepted legal definition of “good faith”, and ignores the fact that there is already an existing and indeed different duty of good faith implied into all franchise agreements. The new prohibition will render uncertain all franchise agreements, as it would not be difficult to portray many commercial actions by a franchisor as “unfair”, “unreasonable” or not occurring in a “cooperative manner”. The new definition of good faith also flies directly in the face of conclusions by two Federal inquiries that it is inappropriate to introduce any new statutory obligation of good faith into commercial dealings, let alone one so extreme.

- **Automatic renewal** - A franchisee may seek a redress order pursuant to which the franchisor must renew the expired franchise agreement for a period and on such terms as the Court decides (clause 14 (1)). This would be entirely contrary to the vast majority of franchise agreements willingly entered into in my experience and would create a lack of certainty to the parties entering into such agreements.
- **Damages** - A franchisee will be entitled to seek damages for personal injury, damage to property and economic loss (clause15). This is a recipe for greater disputation, not less, in my view.

It appears quite clear that the proponent of this Bill has not had wide discussion with people widely involved in the franchise industry. I consider myself as someone widely known in the sector and in touch with the state of play. I do not know one person in the sector who was contacted in relation to this proposed Bill.

The Bill would appear to be based on emotive issues and not on a wide coverage of the facts in the sector. Various wide ranging, expert inquiries have consistently found against implementing such proposals.

I strongly urge the Committee to recommend the total dropping of this proposed legislation. It is fundamentally unsound and will create negative unintended consequences for all parties and to this State.

Should the Committee wish to discuss this submission I am very happy to appear in person.

Yours sincerely



T R Hantke
Managing Director

FRANCHISING SOLUTIONS

Sharing the Knowledge

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COMPANY PROFILE

Franchising Solutions Pty Ltd was founded in 2001 to create a professional consultancy to provide skilled and experienced services to the franchising and SME sectors, through the successful formulation and implementation of the Business Plan and the identification, development and optimisation of the franchise system of operation.

Specific assistance is provided to clients in the following ways:-

- Provision of a franchise system **HEALTH CHECK** and identification of development opportunities and strategies to
 - Grow the system
 - Improve profitability – franchisor and franchisees
 - Introduce greater efficiencies
 - Meet compliance requirements
 - Achieve effective franchisor/franchisee relationships
 - Obtain more effective franchisees
 - Gain greater competitiveness
 - Streamline the organisation
- Undertaking **FEASIBILITY STUDIES** into the incorporation of the franchise system model to
 - Determine if the organisation is suited to franchising
 - Determine the costs/benefits of incorporating the franchise system model
 - Identifying the elements of any potential franchise system components
- Assistance with developing the **IMPLEMENTATION** program for a franchise system model to
 - Implement the selected system in shorter time frames
 - Tailor the system to the needs of the organisation
 - Reduce risks associated with the new strategy
 - Achieve higher returns by minimising mistakes
- Conducting individual and group **COACHING / MENTORING** sessions to improve the effectiveness of senior management and key staff.
- Availability as a **GUEST SPEAKER** or **FACILITATOR** at conferences and meetings.
- Assistance in the provision of advice with respect to **DISPUTE RESOLUTION** processes.

Franchising Solutions is a member of the Franchise Council of Australia.

PERSONAL PROFILE



Tim Hantke
Managing Director

Tim established **Franchising Solutions** in 2001 to address franchise system needs within organisations.

He has over 35 years experience in management roles within small, medium and large enterprises –

- Bradford Insulation – State Manager WA/Victoria
- CSR Limited – State Manager Sugar Division WA and Corporate Representative
- Universal Waldeck – General Manager –Special Projects
- Snap Printing Group – CEO

Such wide experience across industries and geographic locations has ensured Tim has a broad range of skills to support clients of whatever size and whatever development stage they have reached.

As CEO at Snap Printing for nearly 14 years, he oversaw the development of one of Australia's leading franchises. He led that organisation in franchisee relations, technological change, compliance management, innovation in system establishment and development, brand awareness, overseas expansion, franchisee selection and the achievement of profit by franchisees and the franchisor. These initiatives saw Snap grow to 150 franchised centres in 4 countries and win the Franchisor of the Year Award on 4 occasions.

During that period he served for 7 years as a Board Member of the industry association, the Franchise Council of Australia.

In 1996 Tim was appointed to the **Franchise Policy Council** which was the **Federal Government's Franchising Advisory Committee**. It provided advice to the Government with respect to the introduction of the Franchising Code of Conduct.

He has a **Commerce Degree** (Accounting Major) from the University of Western Australia and **Fellow Member** of

- **CPA Australia** (former fellow member)
- **Australian Institute of Management** (and Past President of the WA Division)
- **Australian Institute of Company Directors**

Tim's other current appointments include –

- **Board Member - The Living Stone Foundation (Inc) trading as Lifeline WA and former National Board Member Lifeline Australia.**
- **Board Member – Joyce Corporation Ltd (listed public company) / Bedshed Franchising Pty Ltd**
- **Chairman – Co-operative Purchasing Services Ltd**
- **Panel Member (WA) – Office of Mediation Advisor**
- **Panel Member – ACCC Franchise Consultative Panel**
- **Chair TEC 47 – The Executive Connection (i.e. CEO's group)**
- **Member of several Advisory Boards in the public and private sectors**

He has a **National Police Clearance Certificate**.